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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

DEPARTMENT OF MOTOR VEHICLES,

Respondent and Appellant,

v.

ALIZERA FATHI KARIMZADEH,

Petitioner and Respondent.

D043568

(Super. Ct. No. GIC 810332)

APPEAL from a judgment of the Superior Court of San Diego County, Lisa A. Foster, Judge. Reversed and remanded with instructions.

The Department of Motor Vehicles (DMV) appeals a judgment granting petitioner Alizera Fathi Karimzadeh's petition for a writ of administrative mandamus and ordering the DMV to reverse its decision revoking Karimzadeh's vehicle salesperson's license.

The DMV contends (1) the findings by the administrative law judge (ALJ) were sufficient to allow the trial court to follow the analytic route taken by the DMV from the evidence to the revocation order, and (2) the findings revoking the vehicle salesperson's

license were supported by the evidence. In the alternative, the DMV contends the trial court should have remanded the case to the ALJ for additional findings rather than merely reversing the DMV's revocation order.

## FACTUAL AND PROCEDURAL BACKGROUND

Karimzadeh was licensed by the DMV as both a vehicle dealer and salesperson. In November 2000 Karimzadeh purchased five vehicles at a wholesale auction in his capacity as a vehicle dealer. He wrote a check to the auction house knowing the account did not contain sufficient funds to cover it. Several months later, Karimzadeh reimbursed the auction owners. In April 2001 Karimzadeh pleaded guilty to misdemeanor counts of uttering an insufficient fund check (Pen. Code, § 476a) and grand theft (Pen. Code, § 487). The court sentenced him to three years' informal probation and ordered him to pay restitution to the state restitution fund.

In January 2002 the DMV filed two accusations against Karimzadeh seeking to revoke his vehicle dealer and salesperson licenses. An ALJ held a hearing on the accusations and issued two proposed decisions: one revoking the dealer's license and one revoking the salesperson's license. The DMV adopted the proposed decisions in their entirety and revoked both licenses.

Karimzadeh filed a petition for a writ of administrative mandamus with the Superior Court of San Diego County under Code of Civil Procedure, section 1094.5<sup>1</sup>

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<sup>1</sup> All further statutory references are to the Code of Civil Procedure unless otherwise specified.

seeking to overturn revocation of the salesperson's license.<sup>2</sup> The trial court granted the petition, concluding the findings of the ALJ (1) were not sufficiently particularized to link the crimes committed to the qualifications of a vehicle salesperson, and (2) did not discuss the criteria presented to him relating to rehabilitation of licensees.

## DISCUSSION

The DMV contends the findings made by the ALJ and adopted by the DMV are sufficiently particularized to link the crimes committed to the duties of a vehicle salesperson and the weight of the evidence supports the findings. The DMV argues in the alternative that if the findings were not sufficiently particularized, the trial court should have remanded the case to the ALJ for more specified findings.

### A

In considering a petition for writ of administrative mandamus, the trial court determines whether there was a prejudicial abuse of discretion. An abuse of discretion is established if the trial court finds the order or decision is not supported by the findings, or the findings are not supported by the evidence. (§ 1094.5, subd. (b).) "[I]n cases in which the [trial] court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence." (§ 1094.5, subd. (c).) In this case Karimzadeh petitioned for a writ of mandamus seeking restoration of his license to practice his profession and the trial court was therefore authorized to exercise its

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<sup>2</sup> Karimzadeh did not challenge revocation of his vehicle dealer's license.

independent judgment to determine if the ALJ's findings are supported by the weight of the evidence. (*Clare v. State Bd. of Accountancy* (1992) 10 Cal.App.4th 294, 300.) On appeal of the trial court's judgment, the reviewing court evaluates whether the trial court's judgment is supported by substantial evidence. (*Ibid.*)

## B

In *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515 (*Topanga*), the court concluded that "implicit in section 1094.5 is a requirement that the agency which renders the challenged decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order." Although the findings need not be stated with the formality required in judicial proceedings, they should sufficiently delineate the mode of analysis used to support the decision. (*Id.* at pp. 516-517; *Swars v. Council of City of Vallejo* (1949) 33 Cal.2d 867, 872.)

Relying on *Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, the ALJ's findings stated Karimzadeh's crimes involved dishonesty and moral turpitude and were substantially related to the duties, functions and qualifications of the licensed activity. Although Karimzadeh presented evidence of his rehabilitation, the ALJ's findings did not discuss rehabilitation criteria the DMV adopted to determine whether a licensee is rehabilitated after committing a crime of moral turpitude. Without discussing this evidence in his proposed decision, the ALJ concluded that rehabilitation was a process Karimzadeh had not yet completed. The trial court concluded the ALJ's findings to support revocation of Karimzadeh's vehicle salesperson's license were inadequate

because they were not sufficiently particularized to link the crimes committed to the qualifications of a vehicle salesperson and did not include consideration of the rehabilitation factors listed in the DMV Occupational Licensing and Disciplinary Guidelines. In response to its review of the findings of the ALJ and its independent review of the administrative record, the trial court stated:

"First, . . . I do not believe that the [ALJ] in the findings that were made and subsequently adopted by the [DMV] made a sufficiently particularized finding about Mr. Karimzadeh's business as a salesperson licensee.

"As I review the findings most of them relate to his fitness as a dealer. [Indeed,] . . . throughout the [ALJ] refers to the licensed activity, singular. And it's clear in context that what he is referring to is [whether] Mr. Karimzadeh [is] fit to be a licensed dealer. A finding that . . . is not [challenged] with this petition.

"While the [ALJ] plainly indicates that honesty is a qualification to be a licensed salesperson, . . . a finding that is plainly supported by the case law, he simply assumes that because Mr. Karimzadeh committed a misdemeanor offense that involved dishonesty, that [he] was therefore, unfit to continue to be a licensed vehicle salesperson. And in this court's view that is not a sufficiently specific finding with respect to . . . linking the crime in this case to the qualifications of a vehicle salesperson. . . .

"Second, with respect to rehabilitation, the [ALJ] . . . indicates there is no specific formula to establish rehabilitation. And, in fact, while there is no specific formula there are plainly criteria that the [DMV] has adopted. And those criteria are never specifically addressed [by the ALJ].

"[I]n this court's view taking as I must an independent view of the evidence, believe that there were factors that should have been considered as evidence of rehabilitation. And those factors were presented in the hearing to the [ALJ] and were not discussed [in the findings].

"Included among those are restitution. Payment of the fine or other monetary penalties imposed. Stability of family life. Discharge of or bona fide efforts toward discharging debts or monetary obligations to others. Correction of business practices which resulted in injury to others. New and different social and business relationships from those which existed at the time of the conduct . . . [and] a change in attitude. None of those factors were considered by the [ALJ]. And there was evidence presented at the hearing with respect to at least those factors."

The trial court concluded the ALJ's findings were legally inadequate, and granted the petition for writ of administrative mandamus. However, on two occasions the trial court expressed its view that it preferred to remand the case to the ALJ to clarify or expand the ALJ's findings but was without authority to do so under section 1094.5.

We agree for the reasons stated by the trial court that the ALJ's findings are inadequate to permit a meaningful appellate review of whether the findings are supported by the weight of the evidence (§ 1094.5, subd. (c)) and whether the findings support the revocation order. (*Topanga, supra*, 11 Cal.3d 506.) However, the trial court incorrectly concluded it must grant the petition. When the administrative agency's findings are inadequate, an appropriate remedy is to remand the matter so that proper findings can be made. (*Glendale Memorial Hospital & Health Center v. State Dept. of Mental Health* (2001) 91 Cal.App.4th 129, 139-140 [Court of Appeal reversed and remanded with instructions that the trial court enter an order directing department to make new decisions containing specific supportive findings]; see, e.g., *Eureka Teachers Assn. v. Board of Education* (1988) 199 Cal.App.3d 353, 369.) California Code of Civil Procedure section 1094.5, subdivision (f) provides, "The [trial] court shall enter judgment either commanding respondent to set aside the order or decision, or denying the writ. Where

the judgment commands that the order or decision be set aside, it may order the reconsideration of the case in the light of the court's opinion and judgment . . . ." In interpreting statutory construction, the word "may" is generally construed as permissive, and "shall" is construed as mandatory, particularly when both terms are used in the same statute. (*Santa Cruz Rock Pavement Co. v. Heaton* (1894) 105 Cal. 162, 165.)

Accordingly, it is reasonable to construe that the word "may" in the second sentence of section 1094.5, subdivision (f) neither mandates nor prohibits the trial court from remanding the case to the ALJ, but authorizes it to remand the matter to the ALJ in its discretion. (See *Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 443.)

The trial court mistakenly believed it did not have authority to remand to the ALJ under section 1094.5, subdivision (f). It was appropriate for the trial court to remand the matter to the ALJ to make findings supporting the DMV's revocation order. Remand would promote the administrative decision-making process because by requiring specific, particularized findings it would assure parties that the process is "careful, reasoned, and equitable." (*Topanga, supra*, 11 Cal.3d at p. 517.) Furthermore, a detailed analysis from evidence to conclusion would apprise the trial court of the basis of the ALJ's decision and facilitate judicial review of the administrative findings. (*Id.* at p. 515.) Because the trial court stated twice it would have remanded the case to the ALJ, and Karimzadeh does not contest the trial court's authority to do so, we reverse the judgment and remand the matter to the trial court with instructions to return the case to the ALJ for more particularized findings in support of its decision, based on the evidence presented at the administrative hearings.

## DISPOSITION

The judgment is reversed and the matter remanded to the trial court with instructions to direct the DMV to make a new decision containing specific supportive findings covering the matters referred to by the trial court in its order of direction.

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McDONALD, J.

WE CONCUR:

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McCONNELL, P. J.

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McINTYRE, J.